

SYNOPSIS

SEVERANCE TAX -- TAXPAYERS' FAILURE TO CARRY BURDEN OF PROOF -- The failure of the taxpayer to articulate adequate grounds in his petition for refund justifying his claim, combined with his failure to appear at a hearing and to present any evidence respecting his claim, will result in a denial of relief to the taxpayer. *See* W. Va. Code § 11-10A-10(e) [2002]; W. Va. Code. St. R. §§ 121-1-63.1 and 69.2 (Apr. 20, 2003).

FINAL DECISION

On September 15, 2003, the Unit Manager of the Accounts Monitoring Unit of the Internal Auditing Division of the West Virginia State Tax Commissioner's Office issued an assessment for personal income tax against the Petitioner. This assessment was issued pursuant to the authorization of the State Tax Commissioner, under the provisions of Chapter 11, Articles 10 and 13A of the West Virginia Code. The assessment was for the period January 1, 1998 through December 31, 2000, for tax, interest, computed through September 15, 2003, and additions to tax, for a total assessed tax liability. Written notice of this assessment was served on the Petitioner. According to the petition for reassessment, the taxpayer then paid the amount of the assessment.

Subsequently, the Petitioner had some contact with the State Tax Commissioner's Office. The State Tax Commissioner's Office requested certain documents from the Petitioner. Upon review of those documents, the State Tax Commissioner's Office advised the Petitioner that, in his opinion, the Petitioner was not subject to the severance tax. He further advised the Petitioner that he was entitled to a refund of the amounts previously paid, and that the Petitioner should file a claim for refund.

By letter dated April 29, 2004, the State Tax Commissioner's Office advised the Petitioner that he was in possession of a claim for refund on behalf of the Petitioner. He further advised the Petitioner that he intended to file the claim for refund with this Office.

By letter dated May 12, 2004, this Office advised the Petitioner that it was in receipt of the Petitioner's claim for refund, which was docketed as a petition for refund, and because a hearing had been requested on the docket, that the matter would be continued until the time of the scheduling of the next docket. By letter dated May 14, 2004, this Office granted a motion to remove.

Subsequently, the Petitioner filed a petition for refund which was dated June 17, 2004, postmarked June 18, 2004, and which was received by the West Virginia Office of Tax Appeals on June 23, 2004. In his petition, the Petitioner requests a refund. By letter dated June 28, 2004, the West Virginia Office of Tax Appeals advised the Petitioner that his petition for refund was to be continued until the scheduling of the next docket. On August 3, 2004, the State Tax Commissioner filed his answer by the Managing Attorney.

By memorandum dated August 17, 2004, and received by the West Virginia Office of Tax Appeals on August 18, 2004, an employee, with the Severance Tax Unit of the Internal Auditing Division, requested that the petition for refund be dismissed because it was "filed in error." This motion, not being raised by counsel for the State Tax Commissioner, was neither addressed nor granted.

Subsequently, notice of the evidentiary hearing in this matter was furnished to the Petitioners by letter dated April 26, 2005, sent to the mailing address shown on their petition for reassessment. This notice of the evidentiary hearing was served upon the Petitioner on April 27,

2005, as evidenced by United States Postal Service Form PS 3811, August 2001, Domestic Return Receipt (the “Green Card”) signed for by the Petitioner.

At the time scheduled for convening the small claims hearing, there was no appearance on behalf of the Petitioner. The small claim hearing was held, however, without an appearance on behalf of the Petitioner, in accordance with the provisions of W. Va. Code § 11-10A-10(a) [2002] and W. Va. Code. St. R. § 121-1-69.1 (Apr. 20, 2003).

FINDINGS OF FACT

1. In his petition for refund, the Petitioner asserted that he is entitled to a refund for the period of January 1, 1998 through December 31, 2000.

2. The Petitioner bases his assertion that he is entitled to a refund on the fact that he was so informed by The State Tax Commissioner’s Office.

3. The grounds articulated by the Petitioner in his petition, without further evidence in support of his position, are inadequate to show that he is not subject to the severance tax and, therefore, is entitled to a refund of severance tax that he paid for periods in question.

3. The Petitioner was provided with notice that he was required to appear at the evidentiary hearing and present evidence respecting the reasons he believed that he was entitled to a refund of severance tax.

4. The Petitioner did not appear at the time and place of the hearing and presented no evidence respecting any of his allegations.

CONCLUSIONS OF LAW

Based upon all of the above it is **DETERMINED** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for refund, the burden of proof is upon the Petitioner to show that he is entitled to the refund. *See* W. Va. Code § 11-10A-10(e) [2002]; W. Va. Code. St. R. §§ 121-1-63.1 and 69.2 (Apr. 20, 2003).

5. Having presented no evidence in support of his allegations, the Petitioner is not entitled to a refund.

2. Having presented no evidence in support of his allegations, the Petitioner in this matter has failed to carry his burden of proving that any assessment of taxes against him is erroneous, unlawful, void or otherwise invalid.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the severance tax refund claimed by the Petitioner for period of January 1, 1998 through December 31, 2000, is hereby **DENIED**.